

SENATE BILL NO. 139

INTRODUCED BY ESP

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT TO REGISTER A MONTANA DISTRICT COURT ORDER WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PRIOR TO COMMENCING THE ADMINISTRATIVE MODIFICATION PROCESS; CLARIFYING THE CRITERIA FOR REVIEW IN THE ABSENCE OF A SUBSTANTIAL CHANGE OF CIRCUMSTANCES; CLARIFYING THE REMEDY IF A PARTY REFUSES TO PRODUCE THE REQUESTED FINANCIAL INFORMATION; ELIMINATING A MANDATORY MEDIATION SESSION AND CERTAIN SERVICE OF PROCESS REQUIREMENTS; AMENDING SECTIONS 40-4-204, 40-5-226, 40-5-234, 40-5-248, 40-5-271, 40-5-272, 40-5-273, 40-5-277, AND 40-6-116, MCA; REPEALING SECTION 40-5-276, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support -- orders to address health insurance -- withholding of child support.

(1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

- (a) the financial resources of the child;
- (b) the financial resources of the parents;
- (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child and the child's educational and medical needs;
- (e) the age of the child;
- (f) the cost of day care for the child;
- (g) any parenting plan that is ordered or decided upon; and
- (h) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of Title 40, chapter 5, part 9.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may

1 be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning
2 statement in a judgment or order does not preclude the use of withholding procedures.

3 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the
4 order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay
5 period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support
6 withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation
7 if the excess support is a result of annualized withholding.

8 (d) If an obligor is exempted from paying support through income withholding, the support order must
9 include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act,
10 support payments must be paid through the department of public health and human services as provided in
11 40-5-909.

12 (6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies
13 a child support obligation must include a provision requiring the parties to promptly file with the court and to
14 update, as necessary, information on:

15 (i) the party's identity, residential and mailing addresses, telephone number, [social security number,]
16 and driver's license number;

17 (ii) the name, address, and telephone number of the party's employer; and

18 (iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or
19 health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent
20 information regarding coverage or, if the child is not covered, information as to the availability of coverage for
21 the child through the party's employer.

22 (b) The court shall keep the information provided under subsection (6)(a) confidential except that the
23 information may be provided to the department of public health and human services for use in administering Title
24 IV-D of the Social Security Act.

25 (c) The order must also require that in any subsequent child support enforcement action, upon sufficient
26 showing that diligent effort has been made to ascertain the location of the party, the district court or the
27 department of public health and human services, if the department is providing services under Title IV-D of the
28 Social Security Act, may consider due process requirements for notice and service of process met with respect
29 to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's
30 employer's address reported to the court.

(7) A judgment, decree, or order establishing a child support obligation under this part may be modified or adjusted as provided in 40-4-208 or, if the department of public health and human services is providing services under Title IV-D of the Social Security Act, may be modified or adjusted by the department as provided for in 40-5-271 through 40-5-273, ~~and 40-5-276 through 40-5-277~~, and 40-5-278.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, without need for further court order:

(i) to the person with whom the child resides by legal order;

(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;

(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or

(iv) to the court for the benefit of the minor child.

(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

(c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-438, 41-5-1304, or 41-5-1512, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 2. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear -- entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.

(3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default decision and order declaring the amount stated in the notice to be final.

(b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support orders consistent with the hearings officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-272, 40-5-273, ~~and 40-5-276~~ through 40-5-277, and 40-5-278, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by

1 clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties
2 or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or
3 inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of
4 the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also
5 be made in a case in which the parties have agreed to a support amount that varies from the guideline amount.
6 The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to
7 the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary
8 the guideline amount must include a statement of the amount of support that would have ordinarily been ordered
9 under the guidelines.

10 (6) In a hearing to enforce a support order or to establish paternity under this chapter, the department
11 shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known
12 address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit
13 participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

14 (7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received, and
15 all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The
16 determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253
17 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered
18 or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

19 (b) A child support obligation established under this section is subject to the registration and processing
20 provisions of part 9 of this chapter.

21 (8) A support order entered under this part must contain a statement that the order is subject to review
22 and modification by the department upon the request of the department or a party under 40-5-272, 40-5-273,
23 ~~and 40-5-276 through 40-5-277, and~~ 40-5-278 when the department is providing services under IV-D for the
24 enforcement of the order.

25 (9) A support debt determined pursuant to this section is subject to collection action without further
26 necessity of action by the hearings officer.

27 (10) A child support obligation determined under this part by reason of the obligor's failure to request
28 a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an
29 obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated
30 in the Montana Rules of Civil Procedure. When issuing a support order, the department shall consider whether

any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order.

(11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(b) If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in 40-5-909.

(12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the department's order must include a provision requiring each party other than the department to promptly file with the department and to update, as necessary, information on:

(i) identity of the party;

[(ii) social security number;]

(iii) residential and mailing addresses;

(iv) telephone number;

(v) driver's license number;

(vi) name, address, and telephone number of employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

1 (c) The department shall keep the information provided under subsection (12)(a) confidential except
2 as necessary for purposes of Title IV-D of the Social Security Act.

3 (13) The hearings officer may:

4 (a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and
5 orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

6 (b) compel the attendance of witnesses at administrative hearings;

7 (c) compel obedience of subpoenas for paternity blood tests;

8 (d) compel the production of accounts, books, documents, and other evidence;

9 (e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in
10 accordance with the provisions of 2-4-104.

11 (f) compel the production of information requested by the department or a IV-D agency of another state
12 under 40-5-443.

13 (14) A contempt occurs whenever:

14 (a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or
15 of the department;

16 (b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for
17 genetic paternity tests fails to do so;

18 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing
19 fails to do so;

20 (d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with
21 discovery requests;

22 (e) a person or entity compelled by administrative subpoena from the department or another IV-D
23 agency to produce financial information or other information needed to establish paternity or to establish, modify,
24 or enforce a support order fails to do so;

25 (f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions
26 of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time
27 that income is required to be withheld and paid to the department and the payor fails to take the required action.

28 (g) a payor or labor union fails to provide information to the department or another IV-D agency when
29 requested under 40-5-443[; or]

30 [(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any

1 other purpose without the authorization of the department].

2 (15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice
3 by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the
4 law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts
5 constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there
6 is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a
7 citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be
8 determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt.
9 The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal
10 service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

11 (16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take
12 evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to
13 appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds
14 the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each
15 count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under
16 40-5-253 and subject to the provisions of Title 2, chapter 4.

17 (17) An amount imposed as a penalty may be collected by any remedy available to the department for
18 the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income
19 withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1.
20 The department may retain any penalties collected under this section to offset the costs of administrative
21 hearings conducted under this chapter.

22 (18) The penalties charged and collected under this section must be paid into the state treasury to the
23 credit of the child support enforcement division special revenue fund and must be accompanied by a detailed
24 statement of the amounts collected. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch.
25 27, L. 1999.)"

26
27 **Section 3.** Section 40-5-234, MCA, is amended to read:

28 **"40-5-234. Paternity blood tests -- use of expert's affidavit -- effect of test results -- records --**
29 **presumption.** (1) The department shall appoint an expert who is qualified in examining genetic markers to
30 conduct any paternity blood test required by 40-5-233.

(2) An affidavit documenting the chain of custody of any blood specimen is admissible to establish the chain of custody.

(3) If the scientific evidence resulting from a paternity blood test:

(a) conclusively shows that the alleged father could not have been the natural father, the question of paternity must be resolved accordingly. A finding under this subsection is sufficient to overcome a presumption created by 40-6-105.

(b) shows a 95% or higher statistical probability of paternity, the alleged father is presumed to be the natural father of the child. This presumption may be rebutted in an appropriate action in district court by a preponderance of the evidence.

(c) does not exclude the alleged father and shows less than a 95% statistical probability of paternity, the test results may be weighed in conjunction with other evidence to establish paternity.

(4) The department may enter an order of nonpaternity based on a blood test exclusion and may order the department of public health and human services to prepare an amended or substitute birth certificate.

(5) The department may enter in the support order registry established in ~~40-5-274~~ 40-5-906 a written finding of any paternity presumption created by paternity blood test results.

(6) A presumption of paternity established under this section is a sufficient basis for establishing a support order."

Section 4. Section 40-5-248, MCA, is amended to read:

"40-5-248. Lien against real and personal property -- effect of lien -- interest -- warrant for distraint. (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to the department or to an obligee, or both; or

(b) upon registration under ~~40-5-274~~ 40-5-906 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under ~~40-5-274~~ 40-5-906;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as described in 30-9A-301.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until the applicable statute of limitations expires, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or for temporary assistance for needy families, as defined in 53-4-201.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by ~~40-5-274~~ 40-5-906.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of title is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect

1 a security interest under 30-9A-301. The county clerk and recorder or the secretary of state, as appropriate, shall
2 cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing
3 statement within the meaning of the Uniform Commercial Code.

4 (8) A buyer, in the ordinary course of business, who buys an obligor's personal property for value and
5 who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

6 (9) (a) The department may charge interest on the support lien at the rate of 1% per month.

7 (b) Interest accrues at the close of the business day on the last day of each month and is calculated by
8 multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the
9 applicable rate of interest.

10 (c) A provision of this section may not be construed to require the department to maintain interest
11 balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

12 (d) Interest under this subsection (9) is in addition to and not in substitution for any other interest
13 accrued or accruing under any other provision of law.

14 (10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the
15 department shall take all necessary steps to release the support lien.

16 (b) Upon receiving partial payment of the support lien or if the department determines that a release
17 or partial release of the lien will facilitate the collection of support arrearages, the department may release or
18 partially release the support lien. The department may release the support lien if it determines that the lien is
19 unenforceable.

20 (11) A support lien under this section is in addition to any other lien created by law.

21 (12) A support lien under this section may not be discharged in bankruptcy.

22 (13) Support liens provided for by this section may be enforced or collected through the warrant for
23 distraint provided for by 40-5-247."

24
25 **Section 5.** Section 40-5-271, MCA, is amended to read:

26 **"40-5-271. Registration of support orders.** (1) The department may, for the purpose of review and
27 modification proceedings under 40-5-272 and 40-5-273, register support orders issued by a district court of this
28 state or by a court or administrative agency of another state. Registration of the order under this section does
29 not confer jurisdiction for any purpose other than for the review and modification process.

30 (2) When the department conducts review and modification proceedings, the department shall give the

parties notice by personal service or certified mail and opportunity to contest registration of the order. The notice may be included in the notice issued under 40-5-273. A party seeking to vacate the registered order has the burden of proving that the court or agency issuing the order:

(a) did not have jurisdiction to enter the order;

(b) did not have personal jurisdiction over the party; or

(c) did not give the party reasonable notice and opportunity to be heard before the order was entered.

(3) (a) As an alternative to any other registration process or remedy available for the enforcement of a support order issued by a court or agency in another state, the department may register the support order under this subsection (3).

(b) Registration under this subsection (3) is only for the purpose of enforcement and does not confer jurisdiction for any other purpose such as visitation, custody, or paternity disputes.

(c) If an order is registered for enforcement under this subsection (3), the department shall notify the parties to the order of the registration. A copy of the registered order must be included with the notice. The notice must inform the parties:

(i) of the amount of any alleged arrearage as of the date of the notice;

(ii) that a party may request a hearing to vacate the registration or to assert defense to any alleged arrearage for any reason set out in subsection (3)(e);

(iii) that a hearing to contest the validity or enforcement of the order must be requested within 20 days after service of the notice; and

(iv) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and will preclude further contest of the order with respect to any matter that could have been asserted at the hearing.

(d) A party seeking to contest the validity or enforcement of a registered order shall request a hearing within 20 days after service of the notice of registration. If a party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law. If a party timely requests a hearing to contest the validity or enforcement of the order, the department shall schedule the matter for hearing.

(e) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(i) the court or agency issuing the order did not have subject matter jurisdiction to enter the order or lacked personal jurisdiction over the contesting party;

(ii) the court or agency issuing the order did not give the party reasonable notice and opportunity to be heard before the order was entered;

(iii) the order was obtained by fraud;

(iv) the issuing court or agency has stayed enforcement of the order pending appeal;

(v) the order has been vacated, suspended, or modified by a later order;

(vi) there is a defense under the law of this state to the remedy sought; or

(vii) the statute of limitations precludes enforcement of some or all of the arrearages.

(f) If the contesting party does not establish a defense under subsection (3)(e) to the validity or enforcement of the order, the department shall issue an order confirming the order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of the registration. A confirmed order is enforceable as of the date of confirmation in the same manner as an order issued by the department or a district court of this state.

(g) In a proceeding for arrears, the statute of limitations under the laws of this state or of the issuing state, whichever is longer, applies.

(h) Hearings under this subsection (3) are subject to the provisions of the Montana Administrative Procedure Act and must initially be conducted by teleconferencing methods. At the request of a party, the hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing."

Section 6. Section 40-5-272, MCA, is amended to read:

"40-5-272. Application for review of child support orders. (1) Upon the application of the department, the obligor, or the obligee, a support order ~~filed with the support order registry~~ issued by a district court of this state or by a court or administrative agency of another state or a previously issued administrative support order of this state may be reviewed by the department to determine whether the support order should be modified in accordance with the guidelines.

(2) Jurisdiction to conduct the review and to issue a modifying order under 40-5-273, ~~and 40-5-276 through 40-5-277, and~~ 40-5-278 is authorized when:

(a) the obligor and the obligee reside in this state; or

(b) jurisdiction can be obtained as provided under 40-5-231.

(3) Jurisdiction to review a child support order under this section does not confer jurisdiction for any

1 other purpose, such as custody or visitation disputes.

2 (4) Criteria constituting sufficient grounds for review of a child support order include:

3 (a) a substantial change in circumstances as defined by administrative rules;

4 (b) the need to provide for the child's health care needs, regardless of the availability of health insurance
5 coverage to the obligor's child through the obligor's employment or other group insurance; or

6 (c) a lapse of 36 months from the date that:

7 (i) the order was entered or last reviewed;

8 (ii) an administrative hearing was granted under 40-5-277; or

9 (iii) an administrative order was issued denying a modification because of the applicant's failure to meet
10 one of the criteria described in this subsection (4); OR

11 (D) A CHANGE IN OR DENIAL OF SHARING CUSTODY OF THE CHILD.

12 (5) A party may withdraw the party's request for modification prior to the issuance of the notice
13 described in 40-5-273. After the issuance of the notice, if a party withdraws a request for modification, the
14 nonrequesting party may continue the modification action by filing with the department a written request to
15 continue.

16 ~~(5)(6)~~ The department shall make available procedures and forms that allow the obligor or the obligee
17 to complete the review process without legal counsel.

18 ~~(6)(7)~~ To the extent that they are consistent with this section, the provisions of 40-5-145, 40-5-149, and
19 40-5-150 apply to this section."

20
21 **Section 7.** Section 40-5-273, MCA, is amended to read:

22 **"40-5-273. Administrative Notice of review of child support orders -- order for production of**
23 **information.** (1) Upon receipt of a review application setting forth facts meeting any of the criteria for review of
24 a child support order established in 40-5-272, a notice ~~that an~~ of administrative review ~~will be conducted~~ and
25 an order for the production of financial information, if appropriate, must be served either personally or by certified
26 mail on the obligor, the obligee, and any other party entitled to notice. If service is by certified mail, the
27 department must receive a return receipt signed by the person to whom the notice was mailed for the service
28 to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person
29 to whom the notice was mailed requests a hearing or appears at the administrative review hearing. The notice
30 must include ~~the following information as an exception to 2-4-604~~ a statement:

1 (a) ~~a statement~~ of the purpose, objectives, and possible consequences of the review, including that a
2 modified support order may require the obligee to pay a monthly transfer payment to another party;

3 (b) ~~a statement~~ of the right of the obligor and the obligee to request the department to issue subpoenas
4 compelling the appearance of witnesses and the production of documents for a hearing; ~~and~~

5 (c) ~~a requirement that the obligor and the obligee provide the department with telephone numbers at~~
6 ~~which they and their witnesses may be contacted for the review~~ of the dollar amount of the support obligation
7 to be paid each month for the child;

8 (d) of any change in the child's medical support needs, including changes to the original order to bring
9 it into compliance with part 8 of this chapter;

10 (e) of the effective date of the change in the child support or medical support obligation;

11 (f) of the right of any party to request a hearing to contest the amount of child support alleged in the
12 notice or to contest the imposition or modification of a medical support order;

13 (g) that if a party does not timely file a request for a hearing, support, including medical support, will be
14 ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

15 (h) that if a party requests a hearing, the other parties may refuse to participate in the proceedings and
16 that the child support and medical support order will be determined using the information available to the
17 department or provided at the hearing;

18 (i) that a party's refusal to participate is a consent to entry of a child support and medical support order
19 consistent with the department's determination; and

20 (j) that the parties are entitled to a fair hearing under 40-5-277.

21 (2) An order for the production of financial information may be incorporated into the review notice and
22 must ~~state~~ include a statement that:

23 (a) the financial information must be returned no later than the 20th day after the date the order is
24 served;

25 (b) if the requested information is not returned as required, the department may:

26 (i) proceed with the review using the information available to the department;

27 (ii) cease all proceedings for the review; ~~or~~

28 (iii) initiate contempt proceedings in accordance with 40-5-226; ~~and or~~

29 (iv) apply to the district court for an order to compel compliance with the order for production of financial
30 information in accordance with 2-4-104; and

(c) any information required by the order must be provided to the department and other parties prior to the review ~~session~~ hearing.

(3) If, in the absence of a certified mail return receipt showing the date of service, a person requests a hearing ~~or appears at an administrative review~~, any financial information ordered produced pursuant to subsection (2) must be provided to the department no later than the 20th day after the person requests the hearing ~~or appears at the administrative review~~, unless the person requesting the hearing ~~or attending the administrative review~~ waives that date in writing. A person who waives that date in writing shall provide the financial information by the date provided in subsection (2) or by another date established by order of the department.

(4) If additional discovery is requested by a party, the hearings officer may issue subpoenas ordering other parties to produce information in the party's possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines."

Section 8. Section 40-5-277, MCA, is amended to read:

"40-5-277. Administrative review hearing ~~after review~~ -- final order -- court approval of order. (1)

Upon receipt of a timely request for hearing from a party ~~to a review session~~, the department shall schedule an administrative hearing. The hearing is a contested case as defined in 2-4-102 and must initially be conducted by teleconferencing methods. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the department shall grant a de novo in-person hearing. The hearing is subject to Title 2, chapter 4, and 40-5-253, except as otherwise provided in 40-5-272, 40-5-273, ~~and 40-5-276 through 40-5-277, and 40-5-278.~~

~~(2) The administrative hearing following a review session is limited to resolution of contested facts identified by the parties or the department during the review session.~~

~~—— (3) If additional discovery is requested by a party, the hearings officer may issue subpoenas ordering the department to produce unprotected information and ordering other parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines.~~

~~(4)~~(2) In addition to the powers and duties provided by other law, to ensure the equitable determination of a support obligation, during a review hearing the department shall:

(a) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts in dispute;

(b) hear evidence submitted by the parties and rule on its admissibility; and

(c) apply the guidelines to the facts agreed upon and to those determined at the hearing on disputed matters.

~~(5) On the basis of evidence presented on the contested facts at the administrative hearing and the agreed facts determined in the review session, the department may:~~

~~—— (a) adopt its own recommendation;~~

~~—— (b) determine a support obligation in accordance with the guidelines and issue a modifying order; or~~

~~—— (c) terminate the review.~~

(3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents under the notice. The monthly support obligation must be determined with reference to the child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income and financial condition, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable award unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application is unjust or inappropriate. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

~~(6)~~(4) If the department determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modified support order may not change the amount of the support obligation. Regardless of the amount of the support order, the department may determine that an order for the provision of health insurance is appropriate.

~~(7)~~(5) The department shall consider whether or not health insurance for the child is available and make an appropriate order in accordance with part 8 of this chapter for the provision of the child's health insurance.

~~(8)~~(6) In addition to complying with other requirements of law, the modified support order must include the following notices and warnings:

(a) that the parties keep the department informed of the name and address of the obligor's current

1 employer and information on health insurance available to the parties through employment or other group
2 insurance; and

3 (b) that the modified order is subject to future administrative review and modification by the department
4 upon the request of the department or a party under ~~40-5-271 through 40-5-273 and 40-5-276 through 40-5-278~~
5 this part when the department is providing services under Title IV-D of the Social Security Act.

6 ~~(9)(7)~~ Except as provided in subsection ~~(40) (8)~~, an order entered under this section:

7 (a) is a final agency decision and is subject to judicial review pursuant to the Montana Administrative
8 Procedure Act; and

9 (b) must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7, and
10 40-5-253.

11 ~~(40)(8)~~ (a) An administrative modified support order issued under ~~40-5-276~~ or this section that modifies
12 a support order entered by a Montana court ~~or a court of another jurisdiction~~ OR A COURT OF ANOTHER
13 JURISDICTION is not effective as a final order until the modified order is filed with and approved by the court that
14 entered the order, ~~if that order was entered by a Montana district court. If the order was entered by a court of~~
15 ~~another jurisdiction, the order must be filed with and approved by a Montana district court that is an appropriate~~
16 ~~court under the Montana laws or rules of court governing jurisdiction and venue in civil proceedings, IF THAT~~
17 ORDER WAS ENTERED BY A MONTANA DISTRICT COURT. IF THE ORDER WAS ENTERED BY A COURT OF ANOTHER
18 JURISDICTION, THE ORDER MUST BE FILED WITH AND APPROVED BY A MONTANA DISTRICT COURT THAT IS AN APPROPRIATE
19 COURT UNDER THE MONTANA LAWS OR RULES OF COURT GOVERNING JURISDICTION AND VENUE IN CIVIL PROCEEDINGS.

20 The department shall file the proposed modified order with the appropriate court under the Montana laws or rules
21 of court governing jurisdiction and venue in civil proceedings and shall serve the order on the parties and their
22 counsel of record in the administrative and court proceedings ~~personally or by certified mail, return receipt~~
23 ~~requested by mail or personal services in accordance with Rule 5 of the Montana Rules of Civil Procedure~~
24 PERSONALLY OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED BY MAIL OR PERSONAL SERVICE IN ACCORDANCE WITH
25 RULE 5 OF THE MONTANA RULES OF CIVIL PROCEDURE. Service is complete upon ~~signing of the return receipt~~
26 ~~mailing to the last-known address of the parties and counsel of record~~ SIGNING OF THE RETURN RECEIPT MAILING
27 TO THE LAST-KNOWN ADDRESS OF THE PARTIES AND COUNSEL OF RECORD.

28 (b) A party may file a written objection to an administrative modified support order proposed by the
29 department under this section with the court within 20 days after service of a copy of the order on the party. The
30 court shall set a date for a hearing on the objection to the proposed order. If an objection is not filed, the court

1 may without further notice enter its order.

2 (c) The court may adopt an administrative modified support order proposed under ~~40-5-276~~ or this
3 section, modify it, reject it, or remand it to the department with instructions for further hearing. Service of the
4 court order must be in accordance with Rule 5 of the Montana Rules of Civil Procedure. If the court modifies a
5 proposed administrative modified support order proposed under ~~40-5-276~~ or this section without a hearing, a
6 party may file an objection to the court's modification within 10 days of service of the court's order on the party.
7 If an objection is filed, the court shall set a date for hearing the objection and shall enter its final order after the
8 hearing."

9
10 **Section 9.** Section 40-6-116, MCA, is amended to read:

11 **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or
12 nonexistence of the parent and child relationship is determinative for all purposes.

13 (2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall
14 order that a substitute birth certificate be issued under 40-6-123.

15 (3) (a) The judgment or order may contain any other provision directed against the appropriate party
16 to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the
17 furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of
18 the child.

19 (b) Except when the financial responsibility of a responsible parent is in the process of being determined
20 pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision
21 concerning the duty of child support.

22 (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's
23 pregnancy and confinement.

24 (4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

25 (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered
26 in lieu of periodic payments of support.

27 (c) The court may limit the father's liability for past support of the child to the proportion of the expenses
28 already incurred that the court considers just.

29 (5) In determining the amount to be paid by a parent for support of the child and the period during which
30 the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

- 1 (a) the needs of the child, including medical needs;
- 2 (b) the standard of living and circumstances of the parents;
- 3 (c) the relative financial means of the parents;
- 4 (d) the earning ability of the parents;
- 5 (e) the need and capacity of the child for education, including higher education;
- 6 (f) the age of the child;
- 7 (g) the financial resources and the earning ability of the child;
- 8 (h) the responsibility of the parents for the support of others;
- 9 (i) the value of services contributed by the custodial parent;
- 10 (j) the cost of day care for the child; and
- 11 (k) any custody arrangement that is ordered or decided upon.

12 (6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine
13 the child support obligation by applying the standards in this section and the uniform child support guidelines
14 adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be
15 used in all cases, including cases in which the order is entered upon the default of a party and those in which
16 the parties have entered into an agreement regarding the support amount. A verified representation of a
17 defaulting parent's income, based on the best information available, may be used when a parent fails to provide
18 financial information for use in applying the guidelines. The amount determined under the guidelines is
19 presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing
20 evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is
21 inappropriate in that particular case.

22 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state
23 its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is
24 inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have
25 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline
26 amount must include a statement of the amount of support that would have ordinarily been ordered under the
27 guidelines.

28 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the
29 child's support, the court shall state its reasons for not ordering child support.

30 (d) Child support obligations established under this section are subject to the registration and

1 processing provisions of Title 40, chapter 5, part 9.

2 (7) The judgment or order, whether temporary or final, concerning child support and each modification
3 of a judgment or order for child support must include a medical support order as defined in 40-5-804.

4 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the
5 support order, a support obligation established by judgment, decree, or order under this section, whether
6 temporary or final, and each modification of an existing support obligation made under 40-6-118 must be
7 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A
8 support order that omits the exception or that provides for a payment arrangement inconsistent with this section
9 is nevertheless subject to withholding for the payment of support without need for an amendment to the support
10 order or for any further action by the court.

11 (b) If a support order subject to income withholding is expressed in terms of a monthly obligation, the
12 order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay
13 period.

14 (c) If an obligor is excepted from paying support through income withholding, the support order must
15 include as part of the order a requirement that whenever the case is receiving services under Title IV-D of the
16 Social Security Act, support payments must be paid through the department of public health and human services
17 as provided in 40-5-909.

18 (9) (a) If the district court establishes paternity or establishes or modifies a child support obligation, the
19 judgment, decree, or order must include a provision requiring the parties to promptly file with the court and to
20 update, as necessary, information on:

21 (i) identity of the party;

22 [(ii) social security number;]

23 (iii) residential and mailing addresses;

24 (iv) telephone number;

25 (v) driver's license number;

26 (vi) name, address, and telephone number of the party's employer; and

27 (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or
28 health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent
29 information regarding coverage or, if the child is not covered, information as to the availability of coverage for
30 the child through the party's employer.

(b) The order must further direct that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(10) A judgment, decree, or order establishing a child support obligation under this part may be modified or adjusted as provided by 40-4-208 or, if the department of public health and human services is providing services under Title IV-D of the Social Security Act, may be modified or adjusted, by the department as provided for in 40-5-271 through 40-5-273, ~~and 40-5-276 through~~ 40-5-277, and 40-5-278.

[(11) The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

NEW SECTION. Section 10. Repealer. Section 40-5-276, MCA, is repealed.

NEW SECTION. Section 11. Effective date. [This act] is effective July 1, 2005.

- END -